

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	EB Docket No. 07-147
	)	
<b>PENDLETON C. WAUGH, CHARLES M.</b>	)	File No. EB-06-IH-2112
<b>AUSTIN, and JAY R. BISHOP</b>	)	NAL/Acct. No. 200732080025
	)	
<b>PREFERRED COMMUNICATION</b>	)	FRN No. 0003769049
<b>SYSTEMS, INC.</b>	)	
	)	
Licensee of Various Site-by-Site Licenses	)	
in the Specialized Mobile Radio Service	)	
	)	
<b>PREFERRED ACQUISITIONS, INC.</b>	)	FRN No. 0003786183
	)	
Licensee of Various Economic Area Licenses	)	
in the 800 MHz Specialized Mobile Radio	)	
Services	)	

To: The Honorable Judge Arthur I. Steinberg

**RESPONSE BY CHARLES M. AUSTIN TO  
REQUEST FOR PRODUCTION OF DOCUMENTS**

Charles M. Austin ("Austin"), by his attorneys and pursuant to Section 1.325 of the Commission's Rules, hereby responds to the First Request for Production of Documents to Charles M. Austin ("Document Request"), filed October 15, 2007 by the Enforcement Bureau ("Bureau") herein.

**General Objections.**

**A. Previously-Produced Documents**

Austin objects to having to identify or produce any document whatsoever that was previously produced to the Bureau pre-designation. Bureau counsel already possesses these documents, and is at least as capable as Austin's counsel in determining whether any such documents are relevant and material. There is nothing in the Commission's rules which

obligates a hearing respondent to perform the Bureau's investigative functions for it. This objection applies to each and every document request.

### **B. Publicly Available Materials in FCC Files**

Austin also objects to every request to identify or produce copies of FCC applications or other documents on file with the FCC (such as, for example, filings in rulemaking proceedings) and matters of public record at the FCC, such as FCC decisions. The Bureau can review such publicly available materials already. It would be unduly burdensome and unfair to require Austin's counsel to have to sift through such materials, at Austin's expense, to determine which ones might be of interest to the Bureau. This objection applies to each and every document request.

### **C. Documents Created Post-Designation.**

Finally, Austin objects to every request, to the extent such request seeks to have Austin identify or produce any document which was created after the release of the *Hearing Designation Order* herein. Aside from the fact that doing so would be unduly burdensome, most if not all such documents were prepared in anticipation of this litigation, and would consist almost entirely of either privileged information or attorney thought processes (*i.e.*, work product). To the limited extent that any such post-designation document might repeat information also contained in one or more pre-designation documents or discovery responses, it is duplicative, and the Bureau has no need to see it.

### **Specific Answers and Objections.**

1. *All Federal and state tax returns filed by Austin from January 1, 1998 to the present.* Austin objects to this request. Austin's personal tax returns are totally irrelevant to any issue designated herein, and are not likely to lead to the production or preservation of admissible evidence. This request is therefore beyond the scope of proper discovery.

Austin has never personally held any license in his own name. Neither Preferred Communication Systems, Inc. ("PCSI") nor Preferred Acquisitions, Inc. ("PAI") has ever

claimed to the FCC to have relied upon Mr. Austin's personal financial wherewithal to finance any FCC-licensed station. Thus, there is no conceivable basis for the Bureau to seek, or Austin to have to disclose, this material.

2. *All documents relating to and/or Austin's knowledge of each of the felony convictions of Waugh.* There are no such documents, other than those already produced to the Bureau in response to pre-designation requests from the Bureau. See the general objections above.

3. *All documents relating to and/or evidencing Austin's knowledge of each of the felony convictions of Bishop.* There are no such documents, other than those already produced to the Bureau in response to pre-designation requests from the Bureau. See the general objections above.

4. *All applications filed by or on behalf of Austin with the Commission and all documents related to the planning, preparation, review and filing of such applications.* There are no such applications.

5. *All applications filed by or on behalf of PCSI with the Commission and all documents evidencing Austin's involvement in the planning, preparation, review and filing of such applications.* Austin objects to producing copies of any FCC applications. See the general objections above. Austin objects to the remainder of this request as vague and overbroad. If a document pertains to planning, preparation or review of a particular application, what constitutes "evidence" of Austin's involvement? Is it that the document was authored by or sent to him, or that the document was neither authored by nor sent to him? On its face, this request could pertain to virtually every document ever created pertaining to PCSI.

Notwithstanding this objection, documents which are not subject to the general objections and which Austin believes to be responsive to this request are being produced, and are available for inspection at the offices of Austin's counsel herein. Austin is continuing to search for documents responsive to this request. If additional documents are located and identified, they

will either be produced, or, if withheld based upon a claim of privilege, work product doctrine or otherwise, would be identified by (if known) author, recipient(s), date, title and type of claim.

6. *All documents filed by or on behalf of PAI with the Commission and all documents evidencing Austin's involvement in the planning, preparation, review and filing of such applications.* See response to request no.5 above.

7. *All documents relating to any financial obligations that Austin has incurred on behalf of PCSI.* Austin objects to this request as totally irrelevant. No PCSI application (as opposed to PAI application) ever filed with the FCC ever contained any financial certification question, and the *Hearing Designation Order* herein contained no issue pertaining either to PCSI's finances or to any financial certification concerning site-based licenses.

8. *All documents relating to any financial obligations that Austin has incurred on behalf of PAI.* Austin objects to this request as vague and overbroad. Obviously, as the president and CEO of PAI, and the president and CEO of PAI's sole shareholder (*i.e.*, of PCSI), Austin would have approved and signed each and every agreement or other instrument by means of which PAI received funding, whether directly or via its parent. However, in a contract, unless there is a personal guarantee clause to which the officer signs as an individual, it is the entity itself which incurs the contractual obligations, not the officer who has executed the instrument as the authorized representative of the entity. Austin is not personally liable for any obligations of PAI, and thus has not incurred any financial obligations on behalf of PAI. Austin, PCSI and PAI are willing to stipulate that where any financial obligations were incurred by PAI, Austin was the officer who executed the involved instrument as the authorized representative of PAI.

9. *All documents relating to the hiring, firing, and/or supervising by Austin of PCSI employees, agents or other personnel.* Documents which are not subject to the general objections and which Austin believes to be responsive to this request are being produced, and are available for inspection at the offices of Austin's counsel herein. Austin is continuing to search for documents responsive to this request. If additional documents are located and identified, they

will either be produced, or, if withheld based upon a claim of privilege, work product doctrine or otherwise, would be identified by (if known) author, recipient(s), date, title and type of claim.

10. *All documents relating to the hiring, firing, and/or supervising by Austin of PAI employees, agents or other personnel.* Documents which are not subject to the general objections and which Austin believes to be responsive to this request are being produced, and are available for inspection at the offices of Austin's counsel herein. Austin is continuing to search for documents responsive to this request. If additional documents are located and identified, they will either be produced, or, if withheld based upon a claim of privilege, work product doctrine or otherwise, would be identified by (if known) author, recipient(s), date, title and type of claim.

11. *All documents relating to any contracts, arrangements, understandings, and/or agreements that Austin has negotiated or participated in negotiating, on behalf of PCSI.* Austin objects to this request as vague, overbroad and burdensome. On its face, this request seeks every single document mentioning in any way any agreement, whether for a single restaurant meal, janitorial services or debt securities, over a ten-year period.

Notwithstanding this objection, documents which are not subject to the general objections and which Austin believes to be responsive to this request are being produced, and are available for inspection at the offices of Austin's counsel herein. Austin is continuing to search for documents responsive to this request. If additional documents are located and identified, they will either be produced, or, if withheld based upon a claim of privilege, work product doctrine or otherwise, would be identified by (if known) author, recipient(s), date, title and type of claim.

12. *All documents relating to any contracts, arrangements, understandings, and/or agreements that Austin has negotiated or participated in negotiating, on behalf of PAI.* See response to request no.11 above.

13. *Any documents relating to salaries, profits, monies and/or other consideration or compensation, whether tangible or intangible, of any kind and to any extent whatsoever, that Austin has ever earned from, or been promised by PCSI.* Austin objects to this request as

overbroad and unduly burdensome. Notwithstanding the foregoing, Austin is endeavoring to collect and produce copies of: (a) the stock certificate evidencing Austin's stock ownership in PCSI; and (b) any IRS Forms W-2 or 1099 evidencing payment of monies to Austin by PCSI, and intends to produce such documents when located.

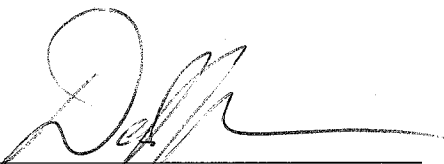
14. *Any documents relating to salaries, profits, monies and/or other consideration or compensation, whether tangible or intangible, of any kind and to any extent whatsoever, that Austin has ever earned from, or been promised by PAI.* There are no such documents.

15. *All documents supporting each of Austin's answers to the Bureau's First Set of Interrogatories to Charles M. Austin.* Austin objects to this request as overbroad and vague. To the extent it relates to such corroboratory documents upon which Austin ultimately decides to rely at hearing, it is premature, as discussed in the objection to request no. 16 below.

16. *All documents on which Austin intends to rely to support any legal or factual premise or defense in this proceeding.* Austin objects to this request as premature. Austin expects that the Presiding Judge will enter an appropriate pre-hearing order pertaining to the exchange by all parties of those documents which each intends to introduce into evidence at hearing, and Austin would intend to abide by any such pre-hearing order, which presumably would be reciprocal and apply to the Bureau as well.

Respectfully submitted,

**CHARLES M. AUSTIN**

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November 26, 2007

**CERTIFICATE OF SERVICE**

I, Steve Denison, a paralegal at the law firm of Brown, Nietert & Kaufman, Chartered, hereby certify that I have caused a copy of the foregoing **"RESPONSE BY CHARLES M. AUSTIN TO REQUEST FOR PRODUCTION OF DOCUMENTS"** to be sent by electronic mail, this 26<sup>th</sup> day of November, 2007, to the following:

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